UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RUSSELL R. CERVANTES, STEPHANIE FAZ, DANIEL YOUNG, and JOHN WARD,	*	
Plaintiffs,	*	**CIVIL NO. SA-15-CA-00287-JWP**
v.	*	
COTTER & SONS, INC, JAMES A. COTTER, JR. and JAMES COTTER SR.,	*	
Defendants.	*	

O R D E R

Russell R. Cervantes ("Cervantes"), Stephanie Faz ("Faz"), Daniel Young ("Young") and John Ward ("Ward") instituted this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 206(a) and 207(a), alleging that their employer defendant Cotter & Sons, Inc. ("Cotter") failed to pay them for overtime. A cause of action was also brought on behalf of Cervantes and Ward under 29 U.S.C. § 215(a)(3) for terminating their employment after they complained of defendants' failure to pay overtime. The Court found that plaintiffs are entitled to judgment with respect to their claims for unpaid overtime compensation as follows: Russell R. Cervantes shall recover from Cotter & Sons, Inc. and James Adam Cotter the sum of $20.25; Stephanie Faz shall recover from Cotter & Sons, Inc. the sum of $131.63; John Ward recover from Cotter & Sons, Inc. the sum of $199.50; and Daniel Young shall recover from Cotter & Sons, Inc.

the sum of $58.50. All other claims and defendants were dismissed with prejudice. Before the Court is plaintiffs' request for attorney's fees. (Docket no. 24).

Under the FLSA, a district court may award reasonable attorney's fees to the prevailing party. **29 U.S.C. § 216(b).** Multiplying the number of hours reasonably spent on the case by an appropriate hourly rate in the community for such work, courts use the so-called "lodestar method." ***Ransom v. M. Patel Enterprises, Inc.***, 734 F.3d 377, 388 n.17 (5th Cir. 2013). There is a strong presumption that the lodestar amount is a reasonable fee, although a court may decrease or enhance it based on the factors established in ***Johnson v. Georgia Highway Express, Inc.***, 488 F.2d 714, 717-19 (5th Cir. 1974). ***Id.***

Plaintiffs seek a total of $14,838.40 in attorney's fees, and $708.40 in costs. Various attorneys and paralegals, identified in the motion, performed work on the case. Joseph L. Lanza testifies to the customary billing rate and indicates that the billing rate used for all attorneys in this case was $225 per hour. He divides time spent into several categories: case management and client meetings, complaint drafting, discovery, motions for summary judgment, settlement offers, scheduling order, investigation, and motion for attorney fees. After deducting redundant, excessive and unnecessary time, Lanza concludes that the attorneys spent 61.7 hours at $225 per hour and the paralegals spent 7.9 hours at $121 per hour for a total of $14,838.40.

When the Court indicated that plaintiffs could file a post-judgment motion for attorneys' fees, it noted they should be mindful that the amount they requested gave due regard for the exceedingly small judgment obtained. They ignored this admonition entirely. As defendants note, on their claim for unpaid overtime compensation, the Court collectively awarded plaintiffs actual damages in the amount of $409.88. They received no liquidated damages, and their claims for retaliatory discharge were dismissed. In their motion, plaintiffs fail to account for their limited success.

The twelve ***Johnson*** factors are (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. ***Union Asset Mgmt. Holding A.G. v. Dell, Inc.***, 669 F.3d 632, 642 n.25 (5th Cir. 2012).

Neither the Court nor defendants question the time and labor expended. Overtime issues in FLSA are neither difficult nor novel. In fact, in federal court these days, they are quite common. Average, perhaps somewhat better than average skill is required to prosecute such cases. For that reason, the Court does not dispute the customary hourly rate requested by plaintiffs' counsel.

Plaintiffs acknowledge that the degree of success obtained is often cited as an important ***Johnson*** factor; if success is limited, the lodestar may be reduced. Plaintiff argues however that the fee award need not be precisely proportionate to the damages. Regardless of proportionality, "[t]he most critical factor in determining an attorneys' fee award is the 'degree of success obtained.'" ***Ransom v. M. Patel Enterprises, Inc.***, 734 F.3d 377, 388 (5th Cir. 2013)(*quoting* ***Romaguera v. Gegenheimer***, 162 F.3d 893, 896 (5th Cir. 1998)(*quoting* ***Hensley v. Eckerhart***, 461 U.S. 424, 436 (1983)). Here, plaintiffs obtained a monetary judgment of $409.88 on some of their claims, lost other claims, yet seek an extraordinary amount of attorney's fees. A reduction in the lodestar is clearly warranted. ***Lee v. Coahoma Cty., Mississippi***, No. 288CV56BO, 1995 WL 1945504, at *5 (N.D.Miss. Nov. 2, 1995)(in reviewing the twelve ***Johnson*** factors, the court finds that a downward adjustment to the lodestar amount is warranted in light of the minimal success obtained by the plaintiffs).

The Court wondered, as it computed the amount of overtime compensation due to plaintiffs, why these meager amount were not offered by defendants and not accepted by plaintiffs. In their response, defendants note that plaintiffs, in their settlement offers, included requests for $17,000 and $22,000 in attorney's fees respectively, which defendants refused to pay. Defendants counter-offered plaintiffs $210.38 in overtime compensation to all plaintiffs plus $1,000 in attorney's fees. Had the amount of $199.50 ultimately determined to be owed by Cotter & Sons to John Ward been included in the offer, the overtime compensation would have matched the final judgment. It appears that the greed of plaintiff's counsel and the penny-pinching counteroffer of defendants precluded this case from settling when it should have. The Court shall reduce the lodestar by 75% in light of the lost claims and successful claims with extremely low monetary recover. Therefore, plaintiffs' motion for attorney's fees is **GRANTED in part** such that plaintiff's counsel is awarded $3,709.60 plus costs in the amount of $708.40 against Cotter & Sons, Inc. and James Adam Cotter.

It is so **ORDERED.**

SIGNED this May 16, 2016

JOHN W. PRIMOMO
UNITED STATES MAGISTRATE JUDGE